

RESIDENTS PETITION MERRY "DUMP" CLEAN-UP

By Judi Barrett

A petition signed by 58 Franklin St.-area residents was brought before the selectmen on Nov. 15 in an attempt to "get something done about the Merry 'dump.'"

David Maluchnik of 1082 Franklin St., who circulated the petition with his wife, acted as spokesman for a group of the petitioners present at the selectmen's meeting. Claiming that certain conditions at the Henry Merry property violate state and local laws, Maluchnik said "Duxbury prides itself on beauty. There isn't a town around here that would allow conditions like this," and added "it's time for the town to do something about that mess."

When Duxbury adopted a protective zoning bylaw in 1944, Henry Merry's construction/moving business was covered by a grandfather clause allowing him to continue with his business.

Maluchnik said town officials had used this grandfather clause as an excuse for no action in the past, and that Merry's non-conforming use stature does not provide for the existing mess on the property.

Among the violations Maluchnik cited is a garbage pick-up business Merry operates. According to Maluchnik and other Franklin St. residents, Merry has been dumping some of this garbage on his own property.

Rats in Neighborhood

As a result, the area has become infested with rats. Earl Richardson, whose property abuts Merry's, said he has spent over \$200 in the past 1½ years for extermination costs.

Richardson said the exterminators told him the rats had to be living in the area because of the garbage on Merry's land, that rats do not live in the same premises where they feed. Thus, there are rats throughout the neighborhood.

William Kates, also of Franklin St., pointed out the dangers to children playing with the rats present. He asked the selectmen what value they would place on the life of a child, wondering if the town would wait to take action on the Merry violations until something dramatic happened.

An order placed on the property in 1975, according to former selectman Ruth Rowley. She said that "if officialdom looks the other way, the violations will continue."

"You have an order -- you should go in, clean up the property, attach a lien and tie it up," Rowley said. She begged the board to declare the Merry property a nuisance in accordance with public health laws. No such action was taken by selectmen, however.

Rowley explained in a later interview that had the selectmen declared the property a nuisance,

they would have been able to get a transfer from reserve funds to clear out the property and attach the necessary lien. She said she knew the town had appropriated, on different occasions, a total of \$13,000 for such action.

Enforcement Problem

Selectman Paul Barber, who described Merry as "a cagey old man who knows his rights," said the order to which Rowley was referring was difficult to enforce, as are all town regulations.

He said recourse through the courts was possible, but would take a great deal of time. The amount it would cost to clean out Merry's property would probably exceed the total value of the property, Barber said.

The selectmen had visited Merry's place on Nov. 12, Barber said, acknowledging that Merry is violating many codes including those governing solid waste disposal.

Judy Kates asked why Merry is allowed to park his trucks in the middle of Franklin St., with Robert Remick saying he had almost had an automobile accident on 4 occasions as a result of Merry's use of Franklin St. as a loading-unloading private way. Both were told the police department is responsible for clearing the street of cars and trucks, with Barber saying the town way on that part of Franklin St. is not defined.

Barber had stated earlier, in response to a question from Stan Briggs, that the town way was defined but he would have to look it up to say exactly what it was.

"Making us Uncomfortable"

Barber also explained that nothing had been done about the Merry property before because the town has grown, and previously no one cared about conditions on Merry's land.

However, records in the files of the board of appeals reflect a different perspective. Between 1946 and 1960, the board considered actions on the Merry Land 5 times; some were initiated by requests from Henry Merry, some by complaints filed under various sections of the town zoning law.

Ruth Rowley said the town has also voiced objections in town meetings. "Enforcement is the problem. Why do people have to express concern -- the laws are on the books?"

Selectman Edmund Dondero countered by saying the Franklin St. residents are doing the right thing by petitioning and appearing before the selectmen. "You are making us uncomfortable," he said.

Relocate Business

Merry did not appear at last Tuesday's selectmen meeting, but sent a letter which Doug Plunkett read:

"I do not believe it will serve any purpose to add to the aggravation -- to attend the meeting.

"I came to this town almost

72 years ago. My father and mother came here almost 20 years before that.

"At this time there is no point in adding to the slanderous, licentious, vicious verbiage that has been edited against us--with great care to be on the borderline."

Robert Deighton spoke on Merry's behalf, saying the town could avoid a lengthy court battle by allowing Merry to move his business to some property he owns on Lincoln St.

Deighton said Merry would need a zoning variance to operate the business on Lincoln St., which would require town meeting approval.

John Leonard said Deighton's presentation was "not germane to the discussion at hand," with several Franklin St. residents echoing that point of view.

Robert Remick and Barbara

Maluchnik both pressed the selectmen as to the course of action that would be taken, and when it would be done. Kates said he had worked on a hotline in Duxbury that was formed because someone died from an overdose, saying he hoped it would be on the selectmen's conscience if a child were seriously hurt or died as a result of the rats living on Franklin St. because of Merry's property.

"I would hope," said Barber, "that it would be on your conscience, Mr. Kates, if you were not properly watching your own kids."

Action Taken

By a unanimous vote of the selectmen, it was decided to seek a cease-and-desist injunction on Merry's disposal of solid waste. Further action will wait until the selectmen have conferred with town counsel David Turner.